HIMA
HEALTH INDUSTRY MANUFACTURERS ASSOCIATION

November 1, 1999

Dockets Management Branch (HFA-305)
Food and Drug Administration
Room 1061
5630 Fishers Lane
Rockville, MD 20852

Re: Guidance on Quality System Regulation Information for Various Premarket Submissions (Docket Number 99D-2212)

Dear Sir or Madam:

The Health Industry Manufacturers Association (HIMA) hereby submits its written comments on the draft guidance entitled "Guidance on Quality System Regulation Information for Various PreMarket Submissions" (Draft Guidance). The Notice of the Draft Guidance's availability was published in the *Federal Register*. See 64 Fed. Reg. 42137 (August 3, 1999).

HIMA is the largest medical technology trade association in the world. It represents more than 800 member firms that manufacture medical devices, diagnostic products and health information systems. HIMA members provide nearly 90 percent of the $62 billion of health care technology products purchased annually in the United States, and more than 50 percent of the $147 billion purchased annually around the world.

HIMA appreciates the opportunity to comment on the Draft Guidance and recognizes its purpose is to provide the medical device industry with FDA's current thinking on information that it believes applicants should include in their premarket approval applications (PMAs) and Product Development Protocols (PDPs), and information that firms should maintain at their manufacturing sites for premarket notifications (510(k)s). However, it is HIMA's position that the Draft Guidance is inappropriate in that it 1) violates FDA's Good Guidance Practices; 2) exceeds the authority provided to the Secretary of Health and Human Services under the provisions of the Federal Food, Drug, and Cosmetic Act (FD&C Act); 3) exceeds or misinterprets the requirements of the Quality System regulation; and 4) diverts FDA's limited resources away from statutory mandated activities.

HIMA requests that FDA and the medical device industry jointly develop a regulatory scheme that complies with the intent of Congress, and that is mutually acceptable to both FDA and the industry.

I. The Draft Guidance Violates FDA's Good Guidance Practices

FDA's Good Guidance Practices published in the February 27, 1997 *Federal Register*, (62 Fed. Reg. 8961, 8963) state:

> The only binding requirements are those set forth in the statute and FDA's regulations. Under the Administrative Procedure Act (Sec. 10.40(d)), in order to bind the public, FDA must (with limited exceptions) follow the notice and comment rulemaking process.

FDA violates its own policy on page 3 of the Draft Guidance when it says:

> PMA and PDP submissions should include a complete description of design controls and manufacturing information required by the QS regulation. This information should be included in standard PMA's, modular PMA's, streamlined PMA's, and PMA supplements. Without this information, the premarket review process for these devices cannot be completed (emphasis added)[1].

The law pertaining to PMAs and to PDPs, and the regulations relating to the content of information required to be in PMA applications specifically do not reference any provisions related to design control. In fact, many of the requirements in the Draft Guidance requiring manufacturers to maintain documents at their manufacturing facilities go beyond those specifically required by the Quality System regulation.

II. Many of the "Requirements" in the Draft Guidance Exceed the Secretary of Health and Human Service's Authority Under the FD&C Act

The sections of the FD&C Act that expressly list the requirements for PMAs and PDPs do not include design control. Section 515(c)(1) of the FD&C Act, which discusses the statutory mandated information pertaining to methods and controls related to the manufacture, processing and installation of the device that is required in a PMA, states:

> Any person may file with the Secretary an application for premarket approval... Such application for a device shall contain... (C) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation of the device... [2]

Section 515(f)(3)(B), which discusses the statutory mandated information pertaining to methods

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[1] This statement contradicts the Draft Guidance's footnote number 1 on page 3, which states:

> This document is intended to provide guidance. It represents the agency's current thinking on the above. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

[2] Section 515(d)(2)(C) of the FD&C Act tracks the language of section 515(c)(1)(C) for the criteria for denying the approval of a PMA.

and controls related to the manufacture, processing and installation of the device that is required in a PDP, states:

> The Secretary determines that the proposed protocol provides-
> ...(iv) a description of the methods to be used in, and the facilitates and controls to be used for, the manufacture, processing, and when relevant, packing and installation of the device...

The language cited above does not provide the authority for the Secretary to request general information on pre-production design validation in PMAs or PDPs. In fact, the Secretary did not have the authority to require that firms develop pre-production design validation until the passage of the Safe Medical Devices Act of 1990.

Section 520(f) of the FD&C Act provides:

> (1)(A) The Secretary may, in accordance with subparagraph (B), prescribe regulations requiring that the methods used in, and the facilities and controls used for, the manufacture, pre-production design validation (including a process to assess the performance of a device but not including an evaluation of the safety or effectiveness of the device), ... conform to current good manufacturing practice as prescribed in such regulations, to assure that the device will be safe and effective and otherwise in compliance with this Act (emphasis added).

The underlined section referred to above contains the language added by the Safe Medical Devices of 1990. The fact that Congress allowed FDA to prescribe regulations for pre-production design validation in section 520(f)(1)(A), and did not modify the relevant sections of the statute pertaining to the information that was to be included in PMAs and PDPs, reinforces the view that PMAs and PDPs were not intended to include an evaluation of the applicant's pre-production design validation process. The relevant sections of the statute referred to above include sections 515(c)(1)(C) and 515(d)(2)(C) relating to PMAs and section 515(f)(3)(B)(iv) relating to PDPs.

Additionally, when Congress added the language in the Safe Medical Devices Act of 1990 allowing the Secretary to prescribe regulations for pre-production design validation, it specifically limited the Secretary's authority. The Secretary was prohibited from promulgating regulations on pre-production design validation that would permit an evaluation of a device's safety and effectiveness. Because the purpose of the review of a PMA and PDP is to determine a device's safety and effectiveness, forcing design validation into the PMA/PDP process is directly contrary to Congress's intent. Moreover, requiring manufacturers to include information on their pre-production design validation procedures in their PMAs and PDPs adds a large amount of additional documentation that fails to serve a useful purpose.

III. Many of the Provisions of the Draft Guidance Exceed or Misinterpret the Quality System Regulation Requirements for Design Control

Even if FDA believes that procedures relating to design control are necessary for the review of PMAs, PDPs, or 510(k)s, many of the requirements described in the Draft Guidance have no counterpart in the law or regulations addressing design control. The FD&C Act makes it clear that the requirements for pre-production design validation are to be prescribed by regulation. No mention is made of providing substantive requirements through guidance. Specifically, section 520(f)(1)(A) of the FD&C Act states:

> The Secretary may, in accordance with subparagraph (B), prescribe regulations, requiring that the methods used in, and the facilities and controls used for, the manufacture, pre-production design validation (including a process to assess the performance of a device but not including an evaluation of the safety and effectiveness of a device) ...conform to current good manufacturing practice, as prescribed in such regulations... (emphasis added)

FDA, pursuant to section 520(f)(1)(A) of the FD&C Act has through notice and comment rulemaking, promulgated specific requirements that companies need to adhere to for design control under the Quality System regulation. The information required in the Draft Guidance exceeds or misinterprets those requirements. The first sentence in the "Introduction" on page 3 of the Draft Guidance states, "This document discusses information required by the Quality System (QS) regulation..." The requirement for such information is further cited in the italicized section on page 4, which states:

> The following information required under the QS regulation should be submitted with PMA and PDP submissions and readily available, when requested by FDA, for a device subject to 510(k) requirements.

These statements referred to above are misleading. Many of the provisions in the Draft Guidance are not specific requirements in the Quality System regulation. The precise information that the Draft Guidance states needs to be in design control procedures appears to be a variation on the questions that investigators were directed to ask when they evaluated companies using the Final Design Control Report Guidance (here after referred to as "FDCRG"). Although many of the items discussed below are good design and business practices for implementing a quality system, many of these items are not specifically required by the Quality System regulation.

Section 820.5 of the Quality System regulation provides:

> Each manufacturer shall establish and maintain a quality system that is appropriate for the specific medical device(s) designed or manufactured, that meets the requirement of this part.

In light of section 820.5, investigators, during an FDA inspection, would not be justified in citing the failure to have all of this information as deviations from the Quality System regulation on Form FDA 483 observations. In fact, Footnote 2 on page 2 the FDCRG provides support for this when it states:

> A negative response to a ... question is not necessarily a citable deficiency.

Firms are only required to have procedures that fulfill the requirements of the Quality System regulation. Since firms are not specifically required to have all of the information in their procedures asked for in the FDCRG, it is highly inappropriate for FDA to require all of the procedures in the Draft Guidance to be submitted in PMAs and PDPs and available when requested by FDA for a device subject to 510(k) requirements. Indeed, this approach appears to elevate the Draft Guidance into an illegal de facto regulation.

Examples of provisions that appear in the Draft Guidance that do not specifically appear in the Quality System regulation include:

820.30 (a)

Item 1 exceeds the requirements in 820.30(a) in that there is no specific requirement to provide an explanation of when design controls apply.

Item 2 exceeds the requirements in 820.30(a) in that there is no specific requirement to provide a description of how risk management or risk analysis will be used throughout the design and development of the device.

820.30 (b)

Item 3 exceeds the requirements in 820.30(b) in that there is no specific requirement for the design and development plan to include information on the development strategy (e.g. Gantt Chart) or to outline the timing strategy, deliverables and milestones that must be completed before the initiation of certain tasks.

820.30(c)

Item 4 exceeds the requirements in 820.30(c) in that there is no specific requirement to include a copy of the written procedure for the identification and control of design input addressing intended use, user/patient/clinical (interfaces and inputs), performance characteristics, safety characteristics, limits and tolerances for safety and performance parameters, risk analysis, toxicity and bio-compatibility, electromagnetic compatibility, compatibility with

accessories/auxiliary devices, compatibility with the environment of intended use, human factors, physical/chemical characteristics, labeling/packaging, reliability, statutory and regulatory requirements, voluntary standards, manufacturing processes, sterility, MDRs/complaints/failures and other historical data, past design history files (DHFs), year 2000 problems for computerized devices and computerized interfaces.

Item 5 exceeds the requirements in 820.30(c) in that there is no specific requirement to provide a summary of how user interface and other human factors issues are considered and addressed in the design input.

Item 6 exceeds the requirements in 820.30(c) in that there is no specific requirement to provide for electronically powered devices an explanation of how EMC issues are considered and addressed in the design inputs.

820.30(f)

Item 9 second bullet exceeds the requirements in 820.30(f) in that there is no specific requirement for a procedure to contain or make reference to a process for resolving any discrepancy between design output and design input requirements. This is a requirement of design input not design verification.

820.30(g)

Item 15 exceeds the requirements in 820.30(g) in that there is no specific requirement for a summary of the risk management program that describes how and when risk management was and will be performed including how the results of the risk management process will be documented, used, and updated.

820.30(j)

Item 19 first bullet exceeds the requirements in 820.30(j) in that there is no specific requirement that if more than one device shares a common DHF, there should be a procedure that describes how the manufacturer identifies each device within the family or group having common characteristics.

Design Control Dossier and Manufacturing Dossier

The guidance document's directive that a Design Control Dossier, a Manufacturing Dossier or a quality manual or other documentation should be consistent with ISO 10013-1195 exceeds the requirements of the Quality System regulation. The requirements of ISO 10013-1195 do not have any legal significance in the United States. If FDA wants these to be legal requirements, it should proceed to include these requirements through notice and comment rulemaking.

IV. Implementing the Draft Guidance as Currently Written Will Divert FDA's Limited Resources Away from Statutory Mandated Activities

FDA officials in public statements have said that FDA's funds are limited and the agency needs more resources if it is to fulfill all of its statutory mandated activities. Having both officials in the Center for Devices and Radiological Health and in the field review a company's general design control procedures for each PMA, modular PMA, streamlined PMA, PMA supplement and PDP is a duplication of effort and is contrary to the scheme envisioned by Congress (discussed in Section II of this document) and the scheme originally envisioned by FDA discussed below.

FDA's Regulatory Scheme

When FDA promulgated the Quality System regulation, it recognized that Congress did not want the agency use pre-production design validation to assess the safety and effectiveness of a device in premarket applications. FDA's regulatory approach was that manufacturers would have a procedure for pre-production design validation (design control) that would contain a process to assess the performance of a device. FDA investigators would evaluate the manufacturer's design control procedures during PMA preapproval inspections. FDA's response to comment 65 to the preamble to the Quality System regulation states:

> FDA will evaluate the adequacy of manufacturers' compliance with design control requirements in routine GMP inspections, including preapproval inspections for premarket approval applications (PMAs) (emphasis added).

FDA's original regulatory plan provided that if, during an inspection, an FDA investigator believed that a distributed device was unsafe or ineffective, the investigator was to send the information to the Center for Devices and Radiological Health. Then, and only under those circumstances, would Center officials take the time to determine if the distributed device lacked safety or effectiveness, and if it was necessary for FDA to take a possible remedial action.

FDA's response to comment 62 of the preamble to the Quality System regulation states:

> ... FDA investigators will evaluate the process, the methods, and the procedures that a manufacturer has established to implement the requirements for design controls. If, based on any information gathered during an inspection, an investigator believes that distributed devices are unsafe or ineffective, the investigator has an obligation to report the observations to the Center for Devices and Radiological Health (emphasis added).

It is redundant, and goes against FDA's original regulatory plan, for officials in the Center for Devices and Radiological Health to check the procedures that a manufacturer has established for design controls when FDA investigators are charged with evaluating this information during

FDA inspections. If the FDA lacks resources, the agency should not have personnel in different offices perform the same function.

The FDA is continually trying to increase efficiency and decrease review times. It is likely that if multiple FDA officials examine numerous design control procedures, review times will increase rather than decrease.

Conclusion

The Draft Guidance is inappropriate in that violates FDA's Good Guidance Practices, exceeds the authority provided to the Secretary in the FD&C Act, does not appear to further the purpose of PMA, PDP, or 510(k) review, and diverts resources away from FDA statutory mandated activities. HIMA requests that the Draft Guidance in its present form not be finalized. HIMA further requests that FDA provide industry with the opportunity to work with the agency in a cooperative effort to achieve a mutually acceptable and appropriate regulatory scheme.

Respectfully submitted,

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